**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION (LODGING) NO. 35 OF 2005**
**IN**
**WRIT PETITION NO.905 OF 1991**

Shramajeevi Nagar Sudhar Rahivasi Committee. ...Petitioners

V/s.

State of Maharashtra & Ors. ...Respondents

Mr.Arif Bookwala alongwith Prachi Nimbalkar for Petitioners.
Mr.G.W. Mattos, AGP for Respondents No.1,2, 5 to 11.
Mr.R.M. Sawant, G.P. for Respondent No.4.

**CORAM : A.S. AGUIAR, J.**
**DATED : MAY 2, 2005.**

**P.C. :-**

1. Heard learned Advocate for the petitioners, learned A.G.P. for Respondent Nos.1, 2, 5 to 11 and learned G.P. for Respondent Nos.3 and 4.

2. The petitioners herein pray that the respondents be punished for violating the Order of this Court dated 7th March, 1991 under the Provisions of Contempt of Courts Act, 1971. The order dated 7th March, 1991 passed by this Court (Coram : Daud, J.) in Writ

Petition No.905 of 1991 reads as follows :-

> "Counsel for Petitioner and the Respondents are heard. Rule issued, made immediately returnable and heard. The Petitioner Society's appeal dated 3-6-1988 containing a prayer for interim stay has not been attended to. The 1st Respondent cannot sit upon the communication at Exh.G endlessly. Until the same is attended to and the decision thereon communication to Petitioner or its Advocate, the Petitioner-Soceity is entitled to an order or protection. Therefore, the rule is made absolute by an injunction restraining Respondents from giving effect to the intended shifting until the decision on Exh.G is communicated to the Petitioner and 6 weeks thereafter if the same happens to go against the Petitioner. No order for costs."

3. By the said order, the respondents were injuncted from giving effect to the intended shifting of

the petitioners until the Application for stay dated 3rd June, 1988 pending before the Minister of State for Revenue in the appeal, that was also pending before him, was communicated to the petitioner and six weeks thereafter if the same went against the petitioners. The petitioners herein claim to be the same petitioners in the said appeal before the concerned Minister. It is the contention of the petitioners that despite the appeal pending before the concerned Minister, the respondents started demolishing the structures coming within the alignment of the carriage way on Eastern Express Highway. It was further pointed out that over 100 structures have been demolished and all the structure would be demolished unless the respondents were restrained. In view of the urgency shown and the statement made that the appeal pending before the Minister has not been disposed of, this Court was constrained to grant an ad-interim injunction restraining the respondents from carrying out any further demolition. By the said order, this Court also appointed Commissioner to visit the site and report as to the factual position on site. Accordingly, the

Commissioner has filed his report dated 15th April, 2005 which is on record.

4. Respondents no.3 and 4 have filed their affidavit in reply dated 21st April, 2005 while respondent no.7 on behalf of other respondents has filed his affidavit in reply dated 29th April, 2005. In their reply, the respondents have pointed out that the statement made by the petitioners that the appeal before the Minister is still pending, is a false statement, and in support thereof, respondents have referred to the Minutes of the Meeting dated 3rd January, 2002 held in the office of the Principal Secretary (Housing). At the said meeting the following persons (as mentioned in Annexure "A" of the Minutes of the meeting) were present on behalf of the petitioners viz. one Shri L.L. Londhe, President and R.P. Gupta and Jagdish Shetty, Members of the Petitioners' Committee. The meeting was held to consider the rehabilitation of eligible slum dwellers whose structures happened to be within the portion affected by the alignment of the proposed expansion of the Eastern Express Highway which was the

subject of the appeal by the petitioners-Shramajeevi Nagar before the Revenue Minister. Item 3 of the Minutes of the meeting records that the responsibility of rehabilitation of the eligible slum dwellers vests on the project Implementing Agency i.e. P.W.D. which was directed to rehabilitate the eligible slum dwellers as per policy of the Government by handing over possession of the tenements ready for rehabilitation immediately. Item No.4 of the Minutes records that the application of the petitioners dated 3rd June, 1988 being under the provisions of the Maharashtra Land Revenue Code is rejected as the said application is not filed before the appropriate authority. It is pointed out that the application against the order of Tahsildar Revenue and Forest Department has no jurisdiction under the Maharashtra Land Revenue Code, 1966 to directly entertain the application and therefore, the said application was rejected. It was further directed that intimation of the order was to be given to the applicants. The Minutes of the meeting further recorded that the petitioner-society was at liberty to file an application before the Competent Authority i.e. Deputy

Collector and directed that papers and proceedings in respect of the matter be forwarded for appropriate action to Revenue and Forest Department.

5. Learned Advocate for the petitioners points out that the latter part of the order has not been complied with. The action, if any, of the Revenue and Forest Department has not been communicated to the petitioners nor have the papers and proceedings been forwarded to the Revenue and Forest Department for appropriate action.

6. Clearly, there is no substance in submission of the learned Counsel for the petitioners. The question of the respondents communicating the order to the petitioners by a separate communication did not arise as the petitioners were fully represented at the said meeting held on 3rd January, 2002 by their President and two of the Committee members.

7. Learned Government Pleader and A.G.P. for the respondents further point out that by letter dated 15th

February, 2003, the Revenue and Forest Department have informed the Advocate of the petitioners' society that the remedy against the order of the Tahsildar, Kurla, dated 20th April, 1988, was to file the appeal before the Competent Authority (Deputy Collector, Mumbai Suburb District). Petitioners contend that they have not received this letter as the same was addressed to their former Advocate and there is nothing on record to show that the said letter has been sent or received by the petitioners. Learned Counsel for the respondents produces a xerox copy of an extract of entry at Serial No.22 from the Outward Register showing the dispatch of the said letter dated 15th February, 2003 No.2606/5/Pra.Kra-930/J-3.

8. Even assuming this letter was not received by the petitioners, the fact remains that the petitioners were aware of what transpired at the meeting of the Department on 3rd January, 2002 at which the Committee's President and two other members were present. The petitioners, therefore, cannot claim that they were not aware of the disposal of the appeal by the Revenue

Minister. Since the petitioners' application was disposed of by the concerned Minister, there was no question of any injunction pending disposal of the application restraining respondents from taking any action for evicting the petitioners members falling within the alignment of expansion of Eastern Express Highway. The order of this Court dated 7th March, 1991 in respect of which contempt has been alleged had in fact been rendered infructuous by the disposal of the application by the Revenue Minister. The impugned action of the respondents therefore is free from any taint of contempt of this Court.

9. Learned G.P. for respondents no.3 and 4 MMRDA state the respondents have in their affidavit in reply (para 6) stated that all those persons who were declared eligible have been provided alternate accommodation in the form of tenements of 225 sq.ft. at Vashi Naka of Chembur. It is further pointed out that there are 262 structures falling within the alignment of Eastern Express Highway Expansion near Amar Mahal Junction at Chembur which are part of the petitioners' society. Out

of said 262 structures, about 63 structures have been declared eligible as per Government Policy dated 1st January, 1995 and the said 63 persons have been given allotment letters and out of these 63 persons, 55 have shifted to the permanent alternate accommodation provided by MMRDA. It is further pointed out that out of the list of the persons of Shramjeevi Nagar annexed to the petition at Exhibit-B, only 12 persons come within the alignment of 61 metres who have been declared eligible and allotted alternate accommodation which they have taken. Rest of the persons in the said list are not found in the list of persons found to be affected by the alignment. Furthermore, it has been stated by the respondents MMRDA that those persons falling in border line cases have been provided transit accommodation at Wadala and as soon as their eligibility is decided, they will be allotted alternate accommodation, if so entitled.

10. Respondent No.7 i.e. Deputy Collector, (Encroachment/Removal), Chembur Division has filed his affidavit. It is denied that the respondents have

demolished the petitioners' structures despite pendency of the appeal before the Government. It is pointed out that since the petitioners' members were found to have encroached upon Government land, order was passed under Section 50 of the Maharashtra Land Revenue Code by the Tahsildar (Enc.) Kurla. The petitioners challenged the respondents action in the City Civil Court vide Suit No.3537/88. However, since the order passed under Section 50 of the Maharashtra Land Revenue Code which are appealable order, the petitioners were granted liberty to file an appeal against the order dated 20th April, 1988 before the Competent Authority and order of status quo was granted. The appeal filed before the Revenue Minister is the same plaint that was filed in the City Civil Court. The Appeal/Application before the Revenue Minister was, as stated above, rejected.

11. Reference is also made to the meeting held in the department on 3rd January, 2002 in which it was decided that the Additional Collector, Encroachment, Eastern Suburbs was to decide the eligibility of the affected persons for rehabilitation. The said

respondents have accordingly carried out the said exercise and completed the same by 2nd March, 2002 and 70 persons out of 140 persons belonging to petitioners' Association were found eligible for rehabilitation. It is further pointed out that despite the petitioners being informed of the said meeting and also by subsequent letter dated 15th February, 2003 that the appeal should be filed before the Competent Authority, the petitioners are failed to do so.

12. This Court had granted the interim injunction on the specific plea of the petitioners that the appeal was pending before the Revenue Ministers which statement to the knowledge of the petitioners, and more specifically to the knowledge of the petitioners' President who has affirmed the petition, was false. In the circumstances, this Court vacates the ad-interim injunction granted by it by order dated 13th April, 2005. In view of the aforesaid facts, the petition is also dismissed in limine.

13. Petitioners are directed to pay costs of

Rs.5000/- to the respondents.

14. Application for stay rejected.

. Authenticated copy of this Order be supplied to the parties.

**(A.S. Aguiar, J.)**